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08/050554

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08/050,554 04/20/93 DOUBEK

W C348.12-0003

EXAMINER

ASHER, K

F3M1/0728

ART UNIT

PAPER NUMBER

3

THOMAS A. RENDOS
KINNEY AND LANGE
625 FORTH AVENUE SOUTH
SUITE 1500
MINNEAPOLIS, MN 55415

3307

DATE MAILED:
07/28/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449. (3 sheets)
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-10 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-4, 8, 9, 11, 12, and 16 are rejected.

5. ☒ Claims 5-7 and 10 are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Serial No. 08/050,554
Art Unit 3307

5 Claims 1-16 are provisionally rejected under the judicially
created doctrine of obviousness-type double patenting as being
unpatentable over the claims of copending application Serial No.
08/050,557 and 08/048,589. Although the conflicting claims are
10 not identical, they are not patentably distinct from each other
because the claims in all cases have the same elements renamed
and rearranged.

This is a provisional obviousness-type double patenting rejection
because the conflicting claims have not in fact been patented.

15 The following is a quotation of 35 U.S.C. § 103 which forms the
basis for all obviousness rejections set forth in this Office
action:

20 A patent may not be obtained though the invention is not
identically disclosed or described as set forth in section
102 of this title, if the differences between the subject
matter sought to be patented and the prior art are such that
the subject matter as a whole would have been obvious at the
time the invention was made to a person having ordinary
25 skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which
the invention was made.

30 Subject matter developed by another person, which qualifies
as prior art only under subsection (f) or (g) of section 102
of this title, shall not preclude patentability under this
section where the subject matter and the claimed invention
were, at the time the invention was made, owned by the same
person or subject to an obligation of assignment to the same
35 person.

Claims 1, 8, 9, 11, and 12 are rejected under 35 U.S.C. § 103 as
being unpatentable over Sawyer.

40 The mere replacement of edge connections for center
connections (claim 1) is not of patentable significance,
given the lack of any unexpected result due therefrom. With

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regard to claims 8, 9, 11, and 12, note the hooks of Sawyer
and page 2, column 1, paragraph 1.

- 5 Claims 2-4, and 16 are rejected under 35 U.S.C. § 103 as being
unpatentable over Sawyer as applied to claim 1 above and further
in view of Brennan.

10 Sawyer teaches a simple nasal dilator comprising two nose
attachment members and a tensioning member connecting the
two. Brennan teaches an adhesively mounted nasal dilator
that is formed from multiple layers each of which extends
across the nose from one nostril to the other. The
15 replacement of the single tensioning member layer and
multiple attachment sites of Sawyer, with a single and
continuous attachment site, and tensioning member mounted on
the attachment layer would have been obvious to one of
ordinary skill in the art to as such would merely have
involved the replacement of separately mounted elements for
20 integrally mounted elements.

25 Claims 5-7, 10, and 13-15 are objected to as being dependent upon
a rejected base claim, but would be allowable if rewritten in
independent form including all of the limitations of the base
claim and any intervening claims, AND UPON FILING OF A PROPER
TERMINAL DISCLAIMER.

30 An inquiry concerning this communication should be directed to K.
L. Asher at telephone number (703) 308-0858.

35

July 28, 1993


Kimberly L. Asher
Examiner